

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**In re: Target Corporation
Customer Data Security Breach
Litigation,**

This document relates to all actions.

MDL No. 14-2522 (PAM/JJK)

Hon. Paul A. Magnuson

**Consumer Plaintiffs' Case Management
Conference Brief**

This case management conference brief is filed jointly by plaintiffs in the Consumer Cases pursuant to the Court's Pretrial Order No 1.

I. Primary Facts, Allegations, Claims and Defenses

A. Factual Background

On December 19, 2013, Target announced that credit and debit card information for 40 million of its customers had been compromised. A few weeks later, Target announced that additional personal information, including email and mailing addresses and phone numbers, of up to 70 million customers had also been exposed. The theft occurred at the peak of the holiday shopping season, and was initially thought to have affected customers who used their payment cards at Target stores between November 27 and December 18, 2013. Subsequent investigations revealed that the PII of customers who also shopped before November 27, 2013 was compromised in the breach. It is believed to be the largest data security breach in United States history.

The security breach was the subject of a series of congressional hearings in February 2014, and Target's security measures are being investigated by the Department

of Justice, the U.S. Secret Service, the Federal Trade Commission, and several states law enforcement agencies. Target officials testified before Congress that the company only began investigating on December 12, when the Department of Justice warned the company about suspicious activity involving payment cards.

Once inside Target's systems, the cyber thieves acquired the "track data" from customer transactions at Target stores. "Track data" is the data that is stored on a credit or debit card's magnetic strip that is swiped when a customer makes a purchase. The data includes the customer's name and the card number, expiration date, and three-digit CVV security code. Target has since confirmed that encrypted PIN numbers were also stolen. In addition, the thieves acquired a wide variety of other personally identifiable information ("PII") well beyond track data, including names, addresses, phone numbers, e-mail addresses, and other credit and/or financial histories which Target acquires and maintains concerning its customers.

According to a report issued by the Senate Committee on Commerce, Science, and Transportation, the thieves sold and continue to sell the stolen information in black market internet forums known as "card shops." Criminals purchase this stolen information and use it to make new, phony cards that can be used to make fraudulent purchases. Stolen information can lie dormant for years before being used to commit fraud.

After Target's substandard security practices were made public, Target's sales declined. Target's fourth-quarter earnings report, published in February 2014, showed

stores' sales suffered in the weeks following the disclosure of the breach. Net income fell 46% to \$520 million from \$961 million in 2012, and sales were down 5.3%. On Monday, May 5, 2014, Target's Chairman and Chief Executive, Gregg Steinhafel, was removed from his positions.

B. The Consumer Cases' Allegations

Consumers impacted by the data breach sued Target in several federal courts, and the JPML has transferred the cases to this Court for coordinated proceedings. Plaintiffs in the Consumer Cases allege, generally, that Target failed to take reasonable measures to protect its customers' financial and personal information. This alleged failure allowed the cyber thieves to exploit vulnerabilities in Target's point-of-sale systems, and to access and extract customer data for resale on the black market. The Consumer Plaintiffs also allege that Target's security procedures did not comply with industry standards established by the Payment Card Industry Security Standards Council. The Consumer Plaintiffs contend that Target has compromised the security of their account and personal information, exposed them to a continuing risk of fraud and identity theft, and that Target's conduct has allowed the data thieves to place unauthorized charges on counterfeit cards, open new lines of credit, and drain bank accounts. Moreover, the Consumer Plaintiffs contend that had they known of Target's substandard security procedures and methods of collecting and storing customers' PII, they would have paid substantially less for Target's goods and services, or would have not paid at all (*i.e.*, Plaintiffs would have purchased the same product from a different in-store consumer-

goods retailer).

Plaintiffs in the Consumer Cases assert claims for violations of state consumer protection acts and data breach statutes, violations of the Federal Stored Communications Act, and negligence, fraud, breach of contract, unjust enrichment, bailment, conversion, and invasion of privacy. They seek damages and injunctive relief that will require Target to comply with data security protocols necessary to prevent future breaches.

C. Target's Defenses

To Plaintiffs' knowledge, Target has not responded to any of the operative complaints. Plaintiffs do not yet know what affirmative defenses Target intends to assert.

II. Procedural Status of the MDL Cases

A. Discovery

Most of the cases were stayed before they were transferred to this Court, so formal discovery has yet to begin. No depositions have been conducted, no written discovery has been answered, and no documents have been produced. Target has represented that it is preserving all documents and data related to the data breach and the allegations in this case. In addition, with the consent of Judge Gettleman of the Northern District of Illinois, preservation subpoenas have been issued by certain plaintiffs to third parties likely to have discoverable information, including Target vendors and business associates Microsoft, Ariba, Inc., Fazio Mechanical Services, Inc., Bank of America Corporation, and Trustwave. Responses, objections and productions of documents in response to those subpoenas were stayed by Judge Gettleman, although Microsoft has served objections to

the subpoena. *See In Re: Target Corporation Customer Security Breach Litigation*, N.D. Ill. Case No. 13-cv-09070, Dkt. No. 77 (Feb. 27, 2014).

B. Motions, Decisions, and Other Important Events

Target has not responded to any of the complaints and most of the cases were stayed pending transfer to the MDL. Prior to the transfer, plaintiffs in the Northern District of Illinois Consumer Cases filed several motions, including motions for a preliminary injunction, protective orders and class certification. The motions were all denied or withdrawn without prejudice, and the case was eventually stayed. No motions have been filed in this Court since the cases were transferred by the JPML. Plaintiffs will submit their recommendations for the leadership structure for the consolidated litigation as a whole and for the Consumer Cases in accordance with procedures outlined by the Court in Pretrial Order No. 1.

III. Status of Related State Court Litigation

Target removed several Consumer Cases from state court. Plaintiffs are not aware of any related cases that are still pending in state court. Plaintiffs suggest that the Court direct Target to notify plaintiffs and the Court if it is served with related litigation in a state court. If any state case is filed and not removed, plaintiffs propose to confer with Target and counsel for the plaintiffs in the state case regarding coordination and update the Court on the status of the coordination efforts at the monthly status conferences. The parties may suggest that the Court contact the state court judge.

IV. Prediction of the Number of Cases That May Become Part of This MDL

As of May 1, 2014, the JPML had transferred a total of 111 cases to this Court for coordinated proceedings. Plaintiffs anticipate that some additional cases will be transferred or filed in this Court, although the number of new filings has steadily decreased.

V. Discovery

A. Coordination Among the Cases

Plaintiffs will work cooperatively to coordinate discovery. Plaintiffs propose that the firms appointed by the Court as lead or co-lead counsel for the Consumer, Bank and Shareholders Cases form a discovery committee consisting of a representative from each of the cases and liaison counsel for the litigation as a whole be charged with ensuring that written discovery and depositions are coordinated to the extent possible and not unnecessarily duplicative. Plaintiffs also suggest that the parties adopt a bates-numbering system that will clearly identify the producing party, and that Target simultaneously produce documents to plaintiffs in the Consumer, Bank and Shareholder Cases.

B. Plaintiffs' Anticipated Discovery

Plaintiffs in the Consumer Cases intend to focus their discovery on the following key topics and issues: (1) Target's IT network architecture, including the structure of Target's point of sale system for accepting debit and credit card payments, how its stores and transmits payment card information, and how it stores and transmits PII (both before and after the breach); (2) Target's privacy and security policies for protecting its

customer information, including its Data Loss Prevention Program, encryption standards and algorithms (both before and after the breach); (3) how the data breach occurred, including what malware was used and how the data was retrieved; (4) what information was stolen in the data breach; (5) whether Target complied with applicable industry standards and best practices for securing customer data, including its Payment Card Industry (PCI) compliance information; (6) Target's risk assessments concerning vulnerabilities of its security systems and firewalls relating to customer payment card information and personally identifiable information; (7) Target's knowledge of potential problems with its data security before the breach, including prior breaches and threatened breaches; (8) Target's discovery, investigation and analysis of the data breach; (9) Target's decision making process regarding when and how to notify the public that its system had been breached; (10) reports and analyses regarding the data breach that Target exchanged with government agencies and credit card companies; (11) Target's budget and expenditure allocations for data security; (12) the identity of Target's data security vendors, and Target's policies and procedures for vendor access to Target's databases that contained customer information; (13) Target's criteria, guidelines, rules, or standards for granting network, server and system access to its employees and vendors, including retail, technical, administrative and executive employees and vendors, and "super users" (employees and agents who have all levels of access to Target's networks, servers, systems and "active directory"); and (14) Target's network architecture maps and flow diagrams, both before and after the breach.

C. Electronic Discovery

The parties have only preliminarily discussed the format and procedures for production of electronically stored information (ESI), although all agree that ESI is an integral part of this litigation. The parties are particularly attuned to the fact that the production and handling of ESI in this case may carry the risk of further disclosures of class members' personal information. Plaintiffs anticipate negotiating an ESI stipulation with Target once lead counsel is appointed, which they will submit to the Court for consideration.

D. Protective Order

The parties expect to stipulate to a protective order governing the treatment of confidential information once lead counsel is appointed, which they will submit to the Court for consideration. The parties will refer to the Court's proposed form protective order for guidance.

E. Document Repository

Given the number of cases, plaintiffs, and attorneys, a shared document repository for the Consumer, Bank and Shareholder cases makes sense and will increase efficiency. The document repository must comply with strict security protocols set forth in the protective order to be agreed upon by the parties and entered by this Court. Managed properly, the use of single, shared document repository should greatly minimize the risk of disclosure of class members' personal information.

F. Changes to the Federal Rules' Limitations on Discovery

Given the number of parties and the complexity of the litigation, the plaintiffs may request leave to take more than the ten depositions allowed by Rule 30.

G. Expert Discovery

Plaintiffs anticipate that this case will require a number of expert witnesses, including experts on data security, industry standards, and plaintiffs' damages.

H. Procedures for Resolving Discovery Disputes

To reduce the amount of motion practice and increase efficiency, plaintiffs propose that discovery disputes be resolved through letter briefing and regular discovery conferences. Plaintiffs believe that the use of an expedited process for resolving discovery disputes will save the parties and the Court time and resources. Plaintiffs propose that if, after meeting and conferring in good faith, the parties are unable to resolve a discovery dispute, the moving party should submit a five-page letter summarizing its position and any relevant legal authority and the opposing party will have seven days to submit a five-page letter in response. The Magistrate Judge may then hold a telephonic hearing on the discovery matter or rule without a conference. If a party wishes to object to the Magistrate Judge's order, it must file a motion to be heard by the Court at the next regularly scheduled status conference.

VI. Stipulations Regarding Service

Plaintiffs will stipulate to accept service through the liaison counsel appointed for the Consumer, Bank and Shareholder Cases, and that all documents and pleadings may

be served by email if practicable.

VII. Master Complaint

Lead counsel for the Consumer Cases will file a consolidated complaint. Plaintiffs have included a date for filing the consolidated complaints in their proposed schedule.

VIII. Trial Date

Plaintiffs propose a trial date of January 19, 2016. Plaintiffs have requested a jury trial and estimate that trial will take 14 to 21 days, depending on how many issues are resolved through pretrial motions and stipulation.

IX. Proposed Schedule

Plaintiffs propose the following schedule:

Action/Event	Proposed Date
Last day to conduct Rule 16 meet and confer and Rule 26 conference	14 days after the Court enters an order appointing lead counsel
File proposed protective order and ESI protocol	28 days after the Court enters an order appointing lead counsel
Exchange Rule 26(a) initial disclosures	28 days after the Court enters an order appointing lead counsel
File consolidated complaints	42 days after the Court enters an order appointing lead counsel
File motions to dismiss	35 days after filing of the consolidated complaint
File responses to motions to dismiss	28 days after filing of the motion to dismiss
File replies to motions to dismiss	14 days after filing of the response

Deadline to amend pleadings and/or join parties	November 21, 2014
File motions for class certification	December 5, 2014
File responses to motions for class certification	January 23, 2015
File replies to motions for class certification	February 20, 2015
Last day to conduct initial settlement conference	March 27, 2015
Fact discovery cut-off	April 30, 2015
Exchange of expert reports	May 29, 2015
Exchange of rebuttal expert reports	June 26, 2015
Expert discovery cut-off	July 24, 2015
Last day to file non-dispositive motions	August 22, 2015
Last day to file dispositive motions	September 17, 2015
Last day for hearing of dispositive motions	October 29, 2015
Last day to conduct final settlement conference	November 13, 2015
Pre-trial conference for Consumer Case	December 7, 2015
Trial of Consumer Case	January 19, 2016

Dated: May 7, 2014

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